

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Blake L. Anderson,

Case No. 3:18-cv-00502-HDM-WGC

Petitioner

Order

v.

Attorney General, et al.,

Respondents.

11

13 This is a newly-filed habeas corpus action. On October 22, 2018, the petitioner,
14 Blake L. Anderson, a Nevada prisoner acting *pro se*, submitted for filing a petition for
15 writ of habeas corpus (ECF No. 1-1), a request for leave of court to file additional pages
16 (ECF No. 1-2), a proposed order shortening time for response to the petition (ECF No.
17 1-3), and a financial certificate (ECF No. 1-4). Anderson appears to seek relief from this
18 Court in relation to a state-court criminal proceeding, in which a judgment of conviction
19 was recently entered against him, and in which there is currently an appeal from that
20 conviction pending. Anderson states that he seeks “mandamus relief.”

21 This action has not been properly commenced because Anderson has not paid
22 the \$5 filing fee and he has not filed an application to proceed *in forma pauperis*.
23 Anderson filed a financial certificate (ECF No. 1-4); he has not, however, filed an
24 application to proceed *in forma pauperis* as required under the Court's local rules. See
25 LSR 1-1, 1-2. Therefore, this action will be dismissed without prejudice to the filing of a
26 new petition in a new action with either payment of the filing fee (\$5) or a proper
27 application to proceed *in forma pauperis*.

Petitioner is advised, however, that this Court’s ability to intervene in a state criminal proceeding and/or set aside a state court’s judgment of conviction is limited by the exhaustion doctrine and the abstention doctrine in *Younger v. Harris*, 401 U.S. 37 (1971). To satisfy the exhaustion requirement, a claim brought in this Court must have been fairly presented to the state courts completely through to the highest court available. See, e.g., *Peterson v. Lampert*, 319 F.3d 1153, 1156 (9th Cir. 2003) (*en banc*); *Vang v. Nevada*, 329 F.3d 1069, 1075 (9th Cir. 2003). Under the abstention doctrine, a federal court will not entertain a habeas petition seeking intervention in a pending state criminal proceeding, absent special circumstances. See, e.g., *Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983); *Carden v. Montana*, 626 F.2d 82, 83-85 (9th Cir. 1980); *Davidson v. Klinger*, 411 F.2d 746 (9th Cir. 1969).

12 **IT IS THEREFORE ORDERED** that this action is **DISMISSED**, without prejudice
13 to the petitioner filing of a new habeas petition in a new action with either payment of
14 the filing fee or a properly completed application to proceed *in forma pauperis*.

15 **IT IS FUTHER ORDERED** that a certificate of appealability is denied, as jurists of
16 reason would not find the Court's dismissal of this improperly commenced action
17 without prejudice to be debatable or incorrect.

18 **IT IS FURTHER ORDERED** that The Clerk of the Court is instructed to enter
19 judgment accordingly and close this case.

20 **IT IS FURTHER ORDERED** that the Clerk of the Court is directed to send the
21 petitioner two copies each of the form for an application to proceed *in forma pauperis* for
22 a prisoner, and the form for a noncapital petition for writ of habeas corpus, and one
23 copy of the instructions for each form.

DATED THIS 1st day of November, 2018.

Howard D McRabb

**HOWARD D. MCKIBBEN,
UNITED STATES DISTRICT JUDGE**